

ESTTA Tracking number: **ESTTA500863**

Filing date: **10/18/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Baylor Health Care System		
Entity	Corporation	Citizenship	Texas
Address	4005 Crutcher Street Dallas, TX 75246 UNITED STATES		

Correspondence information	Thomas G. Jacks Chalker Flores, LLP 14951 N. Dallas Parkway Suite 400 Dallas, TX 75254 UNITED STATES tjacks@chalkerflores.com, smeyer@chalkerflores.com, ecortez@chalkerflores.com Phone: 214-866-0001
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### Applicant Information

Application No	85633951	Publication date	10/09/2012
Opposition Filing Date	10/18/2012	Opposition Period Ends	11/08/2012
Applicant	Northwest Community Healthcare 800 West Central Road Arlington Heights, IL 60005 UNITED STATES		

### Goods/Services Affected by Opposition


Class 044. First Use: 2010/10/05 First Use In Commerce: 2010/10/05 All goods and services in the class are opposed, namely: Medical services, namely inpatient and outpatient hospital services and general healthcare services
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### Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

### Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85634541	Application Date	05/24/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FIND DR. RIGHT		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2005/09/01 First Use In Commerce: 2005/09/01 Physician referral services and hospital referral services; consulting services in the fields of health care and medicine; provision of health care information and medical information

Attachments	85634541#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition.pdf ( 5 pages )(25040 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Thomas G. Jacks/
Name	Thomas G. Jacks
Date	10/18/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In Re: Application Serial No. 85/633,951  
For the Mark: FINDING DR. RIGHT  
Filed: May 24, 2012  
Published in the Official Gazette: October 9, 2012

	)	
Baylor Health Care System	)	
	)	
Opposer	)	
	)	
	)	Opp. No. _____
v.	)	
	)	
	)	
Northwest Community Healthcare	)	
	)	
Applicant	)	
	)	
	)	

**NOTICE OF OPPOSITION**

Opposer, Baylor Health Care System (“Opposer”), a Texas non-profit corporation, having offices at 4005 Crutcher Street, Dallas, Texas 75246, Suite 300, believes that it will be damaged by registration of the mark shown in Application Serial No. 85/633,951 by Northwest Community Healthcare (“Applicant”), having a listed business address of 800 West Central Road, Arlington Heights, Illinois 60005, and hereby opposes the same and requests that the registration to the Application be refused.

As grounds for opposition, Opposer alleges as follows:

1. On May 24, 2012, Applicant filed an application to register the mark FINDING DR. RIGHT in International Class 044 for “Medical services, namely inpatient and outpatient

hospital services and general healthcare services”, as shown in Application Serial No. 85/633,951 (the “Applicant’s Mark”).

2. On the same day, May 24, 2012, Opposer filed an application to register the mark FIND DR. RIGHT in International Class 035 for “Physician referral services and hospital referral services; consulting services in the fields of health care and medicine; provision of health care information and medical information”, as shown in Application Serial No. 85/634,541 (the “Opposer’s Mark”).

3. Applicant claims in its application that Applicant’s Mark was first used in commerce on October 5, 2010.

4. Opposer first used Opposer’s Mark in commerce on September 1, 2005.

5. Since September 1, 2005, Opposer, its predecessors, or its related companies have continuously used the FIND DR. RIGHT Mark in interstate commerce as a trademark for a variety of medical services. Opposer’s Mark has also continuously appeared in substantial advertising and promotion of Opposer’s medical services, such that the mark is closely identified with Opposer’s services and has gained very valuable public recognition. Opposer has established an outstanding reputation as to the quality of its services sold under the FIND DR. RIGHT Mark.

6. Opposer has continuously used its Mark in interstate commerce since long prior to any date upon which Applicant can rely. By virtue of its marketing of high-quality services bearing Opposer’s Mark in interstate commerce, its expenditures of considerable sums for promotional activities and the excellence of its services, Opposer has developed significant goodwill in its Mark and a valuable reputation.

7. Opposer's trademark rights for the FIND DR. RIGHT Mark has priority over Applicant's rights, inasmuch as Opposer has continuously used its Mark since it commenced use of its Mark, and Opposer's use of the Mark began over five years prior to Applicant's use of the Mark.

8. Applicant's Mark so resembles Opposer's Mark that has been and is currently used, as it is likely to cause confusion, or cause mistake, or to deceive, in violation of Section 2(d) of The Trademark Act, 15 U.S.C. §1052(d), when used on or in connection with Applicant's services.

9. Under the circumstances, registration of Applicant's Mark will injure Opposer by causing the trade and/or purchasing public to be confused and/or deceived into believing that Applicant's services are those of Opposer or are sponsored by Opposer, to Opposer's damage and detriment, and will place a cloud over Opposer's title to its FIND DR. RIGHT Mark in violation of Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d).

10. Opposer's FIND DR. RIGHT Mark was well established long before the filing date of Applicant's subject application and the date of Applicant's alleged first use of the Mark. Registration of Applicant's Mark would diminish and dilute the distinctive quality of Opposer's rights in its FIND DR. RIGHT Mark in violation of 15 U.S.C. §1125(c). Moreover, registration of Applicant's Mark would diminish the advertising value of Opposer's Mark, and such registration would, in the event of any quality problems involving the services offered by Applicant, tarnish the distinctiveness of Opposer's Mark.

11. Applicant's Mark is the same as, or substantially the same as, Opposer's Mark, including in visual appearance and in pronunciation.

12. Applicant's Mark is likely to and/or has diluted and lessened the capacity of Opposer's Mark to identify and distinguish Opposer's services.

13. Applicant's Mark so resembles Opposer's continuously used and well-known Mark as to be likely, when used in connection with the services as set forth in Applicant's application, to lessen the capacity of Opposer's Mark to identify and distinguish Opposer's services.

14. The subject application should be refused because Opposer's rights of continuing its present use of its Mark in commerce are, or would be, threatened by Applicant's registration of Applicant's Mark for Applicant's services, and because Opposer's business would otherwise be damaged by Applicant's registration of Applicant's Mark for Applicant's services.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's FINDING DR. RIGHT Mark and prays that the Trademark Trial and Appeal Board sustain this opposition and refuse to register Application Serial No. 85/633,951 with prejudice.

Dated: October 18, 2012

Respectfully submitted,

CHALKER FLORES, LLP

By: /s/ Thomas G. Jacks

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**ATTORNEYS FOR OPPOSER**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION was served on all parties, this the 18<sup>th</sup> day of October, 2012, by sending the same electronically through the Electronic System for Trademark Trials and Appeals (“ESTTA”) and first class mail, postage prepaid, to the following:

Northwest Community Healthcare  
800 West Central Road  
Arlington Heights, Illinois 60005

Jeffrey E. Fine  
POL SINELLI SHUGHART PC  
100 S 4<sup>th</sup> Street, Suite 1000  
St. Louis, Missouri 63102

/s/ Thomas G. Jacks

Thomas G. Jacks